

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE SIDE

WRIT PETITION NO.577 OF 2005

Santosh Prabhakar Wagh. ...Petitioner.

Vs.

Shashikant Laxman Rajendra & Ors. ...Respondents.

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Mr.G. M. Khambete with Mr. M.R.Kuwar for the
Petitioner.

Mr.S.S. Kulkarni for the Respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

June 20, 2006.

P.C. :

The Appellate Court has passed a decree for eviction on the ground of (i) A permanent construction having been carried out in the tenanted premises; (ii) Non-user; and (iii) Subletting. The 'front portion', as it is

described, of the suit premises was let out for the purposes of conducting a shop, whereas four rooms in the rear were for the purposes of residence. The Petitioner, Santosh, did not step into the witness box but the holder of a Power of Attorney deposed on his behalf. The holder of the Power of Attorney has also verified the petition before this Court. In the course of the evidence, the witness stated that in the front portion of the premises a business was being conducted while in the rear portion consisting of four rooms, the user was that of residence. In the course of cross-examination, the witness admitted that the business of hotel came to be conducted in the premises. In fact, it would appear that the case of the Petitioner was that he was in a partnership with two other persons, namely, Collin Brown and Rajkumar Rajput. From the record it emerges that the Petitioner instituted a suit against the aforesaid two persons (Regular Civil Suit No.796 of 1994) which ended in a decree of compromise which was marked in evidence as Exh.163. The Power of Attorney holder stated in the course of his cross-examination that for the purposes of the hotel, there were ten tables,

twenty benches, two diesel furnaces and one gas furnace. The nature and extent of the commercial activity has emerged on the record. This shows that the original user for residence was completely altered to a user for business purposes.

The Appellate Court while coming to the conclusion that there was a permanent construction in the suit premises held that plaintiff has proved that the height of the plinth was increased; new walls were constructed and that a totally new construction had been carried out in the rear portion. The complaints which were lodged by the Plaintiff with the statutory authorities were produced and marked in evidence. A reference to these complaints has been made in paragraph 19 of the judgment of the Trial Court as well as in paragraph 31 of the judgment of the Appellate Court. The construction was unauthorisedly carried out in the marginal space and was demolished by the Municipal Corporation. The report of the Commissioner was also found to corroborate the nature of the construction which had been carried out.

On behalf of the Petitioner reliance has been placed on Exhibits 132 and 133 to buttress the submission that there was no alteration in the permitted user of the premises. As already noted earlier, the entire evidence on behalf of the Petitioner was that of the holder of his Power of Attorney, Laxman Buddhmal Chavla. In the course of cross-examination, the witness admitted that the documents at Exhs.131 and 132 which he had sought to produce in evidence had not been obtained from the custody of the Petitioner. Clearly the holder of a Power of Attorney was not competent to depose to the contents of the documents which he had admittedly not obtained from the custody of the Petitioner.

On the basis of the evidence, the finding that there was an unauthorised permanent construction and alteration of user is duly established. In these circumstances, the decree for eviction does not warrant the interference of this Court in the exercise of the supervisory jurisdiction under Article 227 of the Constitution.

At this stage, after the judgment is dictated in open Court, Counsel appearing on behalf of the Petitioner states on instructions from the Petitioner who is personally present in Court that the Petitioner does not wish to pursue these proceedings any further and that the Petitioner would vacate the premises subject to this Court granting time until 30th June 2007. Having regard to the nature and background of the matter, the request is fair and proper. Time to vacate the premises is granted until 30th June 2007, subject to the filing of the usual undertaking inter alia stating that the Petitioner shall undertake to pay all the arrears of compensation until the date reserved for vacating the premises. Undertaking to be filed within two weeks from today.

The Petition is accordingly dismissed.

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